

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

JOHN THUMANN

Plaintiff,

v.

ALEX AZAR, in his capacity as Secretary of
the United States Department of Health and
Human Services,

Defendant.

Case No. 1:20-cv-00125

Judge Timothy S. Black

Magistrate Judge Stephen K. Bowman

RESPONSE TO PLAINTIFF'S FIRST SET OF INTERROGATORIES

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Defendant Alex Azar, Secretary of Health and Human Services, hereby serves the following Response to Plaintiff's First Set of Interrogatories.

GENERAL OBJECTIONS

These general objections apply as though restated in full in Defendant's Response to Plaintiff's First Set of Interrogatories Directed to Defendant.

1. Defendant objects to the Interrogatories to the extent that they seek information protected from disclosure by the attorney/client, attorney work product deliberative process.

2. Defendant objects to any and all of the Interrogatories to the extent that they seek disclosure of the mental impressions, conclusions, opinions, legal research and legal theories of counsel.

3. Defendant objects to any and all of the Interrogatories to the extent that they seek to discover the manner or method of proof at trial.

4. Defendant objects to any and all of the Interrogatories to the extent that they seek information that is irrelevant, overbroad, unduly burdensome to produce, or not reasonably calculated to lead to the discovery of admissible evidence.

5. Defendant objects to any and all of the Interrogatories to the extent that they seek information that is protected by the provisions of the Privacy Act, 5 U.S.C. § 552a.

CONDITIONS

1. These answers are made without in any way waiving or intending to waive, but on the contrary, intending to preserve:

- a) All objections as to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose in subsequent proceedings or the trial of this or any other actions;
- b) The right to object to the use of any information which may be provided, or the subject matter thereof, in any subsequent proceedings or the trial of this or any other action on any other grounds;
- c) The right to object on any ground at any time to further discovery proceedings involving or relating to the subject matter of the Interrogatories; and
- d) The right at any time to revise, correct, supplement, clarify or amend these responses in accordance with the Federal Rules of Civil Procedure.

2. All answers to the Interrogatories are based on Defendant's best understanding of the Interrogatories and/or the terms used therein. Such responses cannot properly be used as evidence except in the context in which the Defendant understood the Interrogatories and/or the terms used therein.

3. These answers are not a representation or concession as to the relevance and/or relationship of the information to this action.

ANSWERS AND SPECIFIC OBJECTIONS TO INTERROGATORIES

1. Identify each Person who provided information or otherwise participated in the preparation of Your answers or responses to these Interrogatories.

RESPONSE:

Margaret Castro
Assistant United States Attorney

Jon Dorman
Director, Appeals Policy and Operations Division
Office of Medicare Hearings and Appeals

Brian J. Haring
Deputy Chief Administrative Law Judge
Office of Medicare Hearings and Appeals

Brian Pflaum
Assistant Regional Counsel
Office of the General Counsel
U.S. Department of Health & Human Services

2. Identify the number of ALJ appeals for fiscal year 2019, including:

- a) The total number of ALJ appeals;
- b) The total number of beneficiary ALJ appeals;
- c) The total number of beneficiary ALJ appeals where the beneficiary was represented;
- d) The total number of non-beneficiary ALJ appeals; and
- e) The total number of non-beneficiary ALJ appeals where the non-

beneficiary was represented.

RESPONSE:

Please see attached chart. In sum:

- a) The total number of ALJ appeals: 43,887
 - b) The total number of beneficiary¹ ALJ appeals: 6,865
 - c) The total number of beneficiary ALJ appeals where the beneficiary was represented: 2,602 (649 attorney², 1,953 other representative)
 - d) The total number of non-beneficiary³ ALJ appeals: 37,022
 - e) The total number of non-beneficiary ALJ appeals where the non-beneficiary was represented: 14,368 (1,818 attorney, 12,550 other representative)
3. Identify the number of ALJ appeals for fiscal year 2018, including:
- a) The total number of ALJ appeals;
 - b) The total number of beneficiary ALJ appeals;
 - c) The total number of beneficiary ALJ appeals where the beneficiary was represented;
 - d) The total number of non-beneficiary ALJ appeals; and
 - e) The total number of non-beneficiary ALJ appeals where the non-beneficiary was represented.

RESPONSE:

Please see attached chart. In sum:

- a) The total number of ALJ appeals: 62,762
- b) The total number of beneficiary ALJ appeals: 6,265
- c) The total number of beneficiary ALJ appeals where the

¹ Beneficiary "Other" includes: Advocacy Group, Appointed representative using an Appointment of Representative form (AOR), Authorized Representative (e.g., power of attorney), Member of Congress, Estate, and Family.

² "Attorney" includes only those appeals where Attorney as requestor type was selected by staff in the case processing system when docketing the request for hearing. Some of the Requestors included in "Other" may be attorneys.

³ Non-Beneficiary "Other" includes: Advocacy Group, Appointed representative using an Appointment of Representative form (AOR), Authorized Representative (e.g., power of attorney), State Medicaid Agency, Unspecified, and other.

beneficiary was represented: 2,062 (548 attorney, 1,514 other representative)

d) The total number of non-beneficiary ALJ appeals: 56,497

e) The total number of non-beneficiary ALJ appeals where the non-beneficiary was represented: 20,171 (1,170 attorney, 18,461 other representative)

Respectfully submitted,

DAVID M. DEVILLERS
United States Attorney

s/Margaret A. Castro

MARGARET A. CASTRO (0078968)

Assistant United States Attorney

Attorney for Defendant

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Office of Medicare Hearings and Appeals

FY18 and FY19 Requests for Hearing by Requestor Type

Appeals	2018			2019			Summary
	Beneficiary	Non-Beneficiary	Summary	Beneficiary	Non-Beneficiary	Summary	
Provider ¹		36,324	36,324	9	22,648	22,657	58,981
Attorney ²	548	1,710	2,258	649	1,818	2,467	4,725
Beneficiary	4,203	2	4,205	4,254	6	4,260	8,465
Other ³	1,514	18,461	19,975	1,953	12,550	14,503	34,478
Summary	6,265	56,497	62,762	6,865	37,022	43,887	106,649

1. Included in “Provider” are: Provider, Non-Contract Provider, and Prescribing Physician.

2. “Attorney” includes only those appeals where Attorney as requestor type was selected by staff in the case processing system when docketing the request for hearing. Some of the Requestors included in “Other” may be attorneys.

3. Beneficiary “Other” includes: Advocacy Group, Appointed representative using an Appointment of Representative form (AOR), Authorized Representative (e.g., power of attorney), Member of Congress, Estate, and Family.

Non-Beneficiary “Other” includes: Advocacy Group, Appointed representative using an Appointment of Representative form (AOR), Authorized Representative (e.g., power of attorney), State Medicaid Agency, Unspecified, and other.

Run Date: September 17, 2020

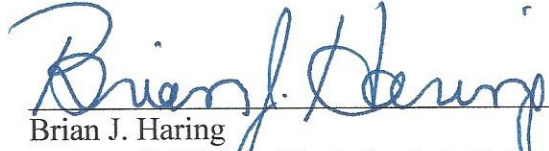
Source of Data: ECAPE and MAS – ALJ Lifecycle Star Package

VERIFICATION

Rule 33, Federal rules of Civil Procedure, requires that your answers be in writing, under oath and signed. On the lines below please swear to the truth of your answers and enter the date on which you swear and sign.

By signing below, I swear that the answers given to the above Interrogatories are truthful.

Dated 10-26-2020



Brian J. Haring
Deputy Chief Administrative Law Judge
Office of Medicare Hearings and Appeals